

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PEARSON EDUCATION, INC. et al.,

Case No.: 1:18-cv-07380-PGG

Plaintiffs,

-against-

DOE 1 D/B/A ANYTHING YOU CAN IMAGINE  
et al.,

Defendants.

**DECLARATION OF ADAM ROSS BIALEK IN SUPPORT OF DEFENDANT  
BORGASORUS BOOKS, INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

I, Adam Ross Bialek, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I am a member of Wilson Elser Moskowitz Edelman & Dicker LLP, counsel for Borgasorus Books, Inc. ("BBI"), a Defendant in the above-referenced action. I make this Declaration based on my own personal knowledge based on my dealings involved in this case, and my review of the file maintained by my office.

2. This declaration is respectfully submitted in support of BBI's Opposition to Plaintiffs' Motion for a Preliminary Injunction.

3. Jennifer Grooms, the President and CEO of BBI is submitting a Declaration informing the Court of her diligence in avoiding the sale of counterfeit books and the lack of necessity of an injunction in order to ensure that continues.

4. BBI has identified at least 21 purchases made by the Plaintiffs. Of those, six books, comprising five titles, were determined to be counterfeit. It is our understanding that Plaintiffs targeted their efforts to books that they suspected would be counterfeit based on information they obtained from other sources.

5. I have been informed that BBI has approximately 300,000 books listed for sale.

Six counterfeit books out of 300,000 is equivalent to 2 books out of every 100,000 books.

6. In March 2017, three publishers and two distributors partnered to provide a list of Anti-Counterfeit Best Practices in response to the publishers' concern over a growing problem of counterfeit textbooks. See Exhibit A attached hereto.

7. On March 1, 2017, Plaintiff McGraw Hill published an article titled "Major Educational Content Providers and Distributors Join Together to Fight Counterfeit Textbooks," announcing that the "Anti-Counterfeit Best Practices" would be made available on the [www.stopcounterfeitbooks.com](http://www.stopcounterfeitbooks.com) website with "the goal that all publishers and distributors adopt and implement them as well." See Exhibit B attached hereto.

8. The StopCounterfeitBooks.com domain is registered to Michael Candore. See Exhibit C attached hereto.

9. Mr. Candore is listed as the Manager, IP Enforcement on Plaintiffs' Counsel's website. See Exhibit D attached hereto.

10. I have personally spoken with Plaintiff's counsel Matt Fleischman about the scope of BBI's efforts and compliance with best practices.

11. Insofar as BBI complies with the best practices identified by the Plaintiffs, and the incidence of counterfeits is much less than a reasonable acceptable level of risk, there is no need for an injunction in this matter.

12. It should also be noted that while the Court's Order calls for injunctive relief on behalf of all Plaintiffs, BBI was alleged to have only sold counterfeit books published by three of the five plaintiffs. As such, there is no basis to issue any type of injunctive relief on behalf of

Plaintiffs Elsevier, Inc. and Bedford, Freeman & Worth Publishing Group, LLC. See ECF Document 7-1, Page 2 of 9.

13. In addition, Plaintiffs McGraw Hill and Pearson have alleged copyright registrations which the Copyright Office records do not seem to match up with the named Plaintiffs alleged claims of ownership. Registration number TX0008434038 is alleged to cover the book entitled "Strategic Management: Concepts, 3rd ed." *See* ECF No. 1-2 at 2. The Complaint appears to allege that Plaintiff McGraw-Hill Global Education Holdings, LLC is the copyright owner of "Strategic Management: Concepts, 3rd ed." ECF No. 7-1 at 2. The publicly available Copyright Office records as shown on Copyright.gov state otherwise. See Exhibit E. These records list entity "McGraw-Hill Education" as the copyright claimant for a work entitled "Strategic Management: Concepts, 3rd edition" assigned registration no. TX0008434038. While rights and permissions are to be directed to McGraw-Hill Global Education Holdings LLC, I am uncertain whether the named plaintiff is actually the owner of the registration. Without it, it would not qualify as the Plaintiff herein and relief could not be granted to it.

14. U.S. Copyright registration number TX0008253612 is alleged to cover the book entitled "Business in Action, 8th ed." ECF No. 1-2 at 3. The Complaint appears to allege that Pearson Education, Inc. is the copyright owner of "Strategic Management: Concepts, 3rd ed." ECF No. 7-1 at 2. The publicly available Copyright Office records as shown on Copyright.gov state otherwise. See Exhibit F. These records list "Bovee and Thill, LLC" as the copyright claimant for the work entitled "Business in Action, 8/E" assigned registration no. TX0008253612. While rights and permissions are to be directed to Pearson Education, I am uncertain whether the named plaintiff is actually the owner of the registration. Without it, it would not qualify as the Plaintiff herein and relief could not be granted to it.

WHEREFORE, based on the Declaration of Jennifer Grooms, my Declaration and the Memorandum of Law in Support of BBI's Opposition to Plaintiffs' Motion for a Preliminary Injunction, it is respectfully requested that the Plaintiffs' Motion for a Preliminary Injunction be denied and the Temporary Restraining Order be cancelled, and for such other, further and different relief that this Court deems just and proper.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed: September 5, 2018



Adam R. Bialek